

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/nk
November 9, 2018
10:00 A.M.

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IN RE:

Case No: 1-18-43429-ess

LORETTA POLISENO-FISCHER AKA
LORETTA POLISENO,

Hon. Elizabeth S. Stong

NOTICE OF PRESENTMENT

Debtor

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PLEASE TAKE NOTICE, the Chapter 13 Trustee will present an Order to the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 for signature on November 9, 2018 at 10:00AM. The proposed order, annexed hereto, strikes, reduces, or sets the amount of certain exemptions without prejudice, pursuant to Fed. R. Bankr. P. 4003(b), and the Chapter 13 Trustee requests such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) days prior to the date the proposed order is to be presented. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response. In the event no written objection is served and filed, no hearing will be held before the Court.

Please be advised that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, the Court will schedule a hearing. Notice of such a hearing will be provided by the movant.

Date: Jericho, New York
October 5, 2018

/s/ Nathan Kaufman
NATHAN Z. KAUFMAN, STAFF ATTORNEY FOR
MARIANNE DeROSA, TRUSTEE
125 JERICHO TURNPIKE; STE 105
JERICHO, NY 11753
(516) 622-1340

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IN RE:

LORETTA POLISENO-FISCHER
AKA LORETTA POLISENO,

Case No: 1-18-43429-ess
Hon. Elizabeth S. Stong

Debtor

APPLICATION

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Nathan Z. Kaufman, Esq., staff attorney for MARIANNE DEROSA, ESQ., the Chapter 13 Trustee (the "Trustee") in the above-captioned estate, respectfully represents the following:

1. This case commenced on June 13, 2018. The Meeting of Creditors was closed on September 5, 2018. The Debtor's currently effective Schedule C (the "Schedule C") was filed with the petition at docket number 1.

2. The Schedule C claims a homestead exemption under N.Y. CPLR §5206 as well as two exemptions under CPLR §5205(a)(9), for two different deposit accounts. The two deposit accounts, and exemption claimed in each, are:

- a. TD Bank x2570, \$1,100.00;
- b. Dime Community Bank x7947, \$50.00;

3. The Trustee objects to the exemptions claimed in each of the two deposit accounts because CPLR §5205(a)(9) is not available to a debtor who takes the CPLR §5206 homestead exemption, such as this Debtor.

4. In addition, the Trustee objects to the Debtor's claim of an exemption in a "IRA Stifel Prestige – 2324" account in the amount of \$25,582.00 under N.Y. Edu. Law §524, as the Debtor has not provided to the Trustee proof that this account is a pension account created by Article 11 of the New York Education Law.

5. The Trustee is amenable to this order being without prejudice to the filing of a future amended Schedule C (see *Law v. Siegel*, 571 U.S. 415 (2014)). The proposed order reflects the lack of prejudice.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order, without prejudice, striking the Debtor's cash exemptions under N.Y. CPLR §5205(a)(9) in the four deposit accounts listed above, and for such other and further relief as the Court may deem just and proper.

Dated: Jericho, New York
October 5, 2018

s/Nathan Z. Kaufman
Nathan Z. Kaufman, Staff Attorney for
Marianne DeRosa, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13
Case No: 1-18-43429-ess

LORETTA POLISENO-FISCHER AKA
LORETTA POLISENO,

ORDER

Debtor

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UPON the October 5, 2018 written application of Nathan Z. Kaufman, staff attorney for Marianne DeRosa, Chapter 13 Trustee, seeking entry of an Order pursuant to Fed. R. Bankr. P. 4003 striking the claim of cash exemptions on Debtor's Schedule C (Dkt. No. 1) in three deposit accounts, and due notice of the aforesaid application having been given to all necessary parties; and

WHEREAS, on November 9, 2018, the application having been presented to the Court and no opposition having been filed; and

WHEREAS, the Court having reviewed the moving papers and determining the Debtor's claim to CPLR §5205(a)(9) cash exemptions is improper because the Debtor has taken a homestead exemption under CPLR §5206, and because the N.Y. Edu. Law §524 State Teachers' Retirement System exemption is improper because the exemption is claimed in an account that does appear to be created under Article 11 of the N.Y. Education Law; and

WHEREAS, the foregoing constitutes cause to disallow the Debtor's claim to those cash exemptions; accordingly, it is

ORDERED, that the Debtor's claims to exemptions under CPLR §5205(a)(9) and N.Y. Edu. Law §524 in the following listed deposit accounts are disallowed and stricken from the Debtor's Schedule C:

- a. TD Bank x2570, \$1,100.00;
- b. Dime Community Bank x7947, \$50.00; and
- c. IRA Stifel Prestige x2324, \$25,582.00

and it is further

ORDERED, that this Order shall be without prejudice to the Debtor filing a future amendment to Schedule C subsequent to this Order.

Dated: Brooklyn, NY
 , 2018

Hon. Elizabeth S. Stong
United States Bankruptcy Judge